

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DUANE ROLLINS,	§	
	§	No. 712, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0606006060
Appellee.	§	

Submitted: August 6, 2010
Decided: November 1, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 1st day of November 2010, upon careful consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) The appellant, Duane Rollins, appeals from a Superior Court January 28, 2010 order denying his motion for postconviction relief under Superior Court Criminal Rule 61. We have determined that there is no merit to the appeal and, accordingly, affirm the judgment of the Superior Court.

(2) Rollins and Demond Laws engaged in a verbal dispute on June 8, 2006. The argument took place on the street near Rollins' house and was witnessed by Laws' girlfriend. The argument escalated when Rollins retrieved something from a nearby vehicle and approached Laws with what

appeared to be a handgun. When Laws' girlfriend called the police, Rollins retreated into his house.

(3) Wilmington Police Detective Patrick Conner arrived at the scene to find other officers securing the premises and trying to get Rollins to come out of the house. Detective Conner left the scene to apply for a search warrant. By the time Conner returned with the warrant, Rollins had surrendered to the police and was in custody.

(4) As a result of his search of the house, yard and vehicle, Detective Conner seized several rounds of ammunition, an electronic scale, clear plastic bags in various sizes, a pot of marijuana plants, and two different substances that he suspected were cocaine or heroin. Conner also recovered a handgun.

(5) In July 2006, Rollins was indicted on drug charges, weapon charges, aggravated menacing and resisting arrest. The Superior Court held a two-day jury trial in March 2007. Rollins elected not to testify at his trial.

(6) The jury convicted Rollins of the drug charges and resisting arrest, but deadlocked on the weapon/ammunition and aggravated menacing charges. Those latter charges were eventually dismissed by *nolle prosequi*.

(7) Rollins filed a direct appeal. Rollins' trial counsel, an assistant public defender, prepared and filed the notice of appeal. Thereafter, a

different assistant public defender filed a substitution of counsel and took over Rollins' representation on appeal. Rollins' appellate counsel later filed a brief and motion to withdraw pursuant to Supreme Court Rule 26(c). By order dated March 10, 2008, we granted the State's motion to affirm, and did affirm the Superior Court judgment.¹

(8) In his motion for postconviction relief filed on March 23, 2009, Rollins claimed that he was denied the right to counsel because (i) "the Public Defender's policy and procedures" prevented trial counsel from providing effective representation;² (ii) to gain credibility with the jury, trial counsel admitted that Rollins "was growing marijuana in a potted plant in his back yard";³ and (iii) trial counsel was replaced by appellate counsel on direct appeal. For those and numerous other reasons, Rollins also claimed that his trial counsel was ineffective,⁴ as was appellate counsel for having failed to examine the record conscientiously to identify appealable issues.

¹ *Rollins v. State*, 2008 WL 637782 (Del. Supr.).

² Rollins alleged that "the Public Defender's policy and procedures . . . are geared toward economy of time and resources, as oppose[d] to client[] needs and rights."

³ The trial transcript reflects that at the outset of the closing statement by the defense, trial counsel stated, "Can the defense stand up here and say marijuana growing in the back yard in a potted plant didn't happen here? No. He was growing marijuana in a potted plant in his back yard." Trial tr. at 15-16 (Mar. 16, 2007).

⁴ The other allegations as summarized are that trial counsel was ineffective when he failed to: (i) personally attend the preliminary hearing and arraignment; (ii) conduct a reasonable pretrial investigation into the legality of the search and seizure; (iii) file a motion to suppress; (iv) interview witnesses who could "potentially provide critical testimony of an exculpatory nature"; (v) prevent Rollins from appearing before the jury

(9) The Superior Court referred the postconviction motion to a Commissioner for proposed findings of fact and recommendations. The Commissioner issued an order directing that trial counsel and appellate counsel file affidavits in response to Rollins' allegations of ineffective assistance, and that counsel for the State file a legal memorandum. The order also allowed Rollins to reply.

(10) In a twenty-one page report dated October 29, 2009, the Commissioner recommended that the postconviction motion be denied. The Commissioner made factual findings based primarily on the parties' written submissions and the trial transcript. Applying the *Strickland* standard, the Commissioner determined that Rollins' ineffective assistance of counsel claims, were without merit after finding that Rollins had not demonstrated that the actions of either counsel fell below an objective standard of reasonableness or that, but for counsel's errors, the outcome of the proceeding would have been different.⁵

(11) In his objections to the Commissioner's report, Rollins claimed that the Commissioner had "an unreasonable determination of the facts,

in prison clothing; (vi) challenge various evidentiary rulings, and (vii) file a motion for judgment of acquittal.

⁵ See *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984) (holding that a defendant claiming ineffective assistance of counsel must show that counsel's representation fell below an objective standard of reasonableness and was prejudicial).

without conducting an evidentiary hearing.” After considering the matter *de novo*, the Superior Court adopted the report and denied Rollins’ motion for postconviction relief. The Superior Court’s order provided:

[The] objections to [the] report do nothing but restate the grounds for relief set forth in [Rollins’] initial motion and reply. The Commissioner correctly applied the appropriate legal standard to [Rollins’] claims of ineffective assistance of counsel, and correctly developed a factual record from which to evaluate those claims.⁶

(12) On appeal, Rollins argues that the Superior Court was required to analyze his denial of counsel claim under the presumed-prejudice standard articulated in *United States v. Cronic*.⁷ The argument is without merit. The record does not reflect “a complete breakdown of the adversary process,” as Rollins contends, or any other circumstances warranting a presumption-of-prejudice analysis under *Cronic*.

(13) Next, Rollins argues that the Superior Court erred in adopting the Commissioner’s report without addressing his specific objections to the factual determinations or conducting an evidentiary hearing. Rollins urges

⁶ *State v. Rollins*, 2010 WL 424447 (Del. Super.).

⁷ See *United States v. Cronic*, 466 U.S. 648, 659-60 (1984) (articulating three situations in which the prejudice requirement under *Strickland* is presumed: (i) when the defendant is denied counsel at a critical stage; (ii) when counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing; and (iii) when the circumstances are such that there is an extremely small likelihood that even a competent attorney could provide effective assistance).

the Court to remand the matter “for a more specific determination of the facts.”

(14) In the circumstances of this case, we determine that the Superior Court properly exercised its discretion when disposing of the postconviction motion without an evidentiary hearing. Having carefully considered the parties’ briefs on appeal and the evidentiary record, the Court concludes that Rollins’ “conflicting facts warranting further inquiry” were, in fact, either reasonably discounted as not supported by the record, persuasively rebutted by counsel’s affidavits, or not material to a determination of Rollins’ claims. Nor does the record support Rollins’ claim that the judge who decided the postconviction motion, who was not the trial judge, failed to give his claims due consideration.

(15) This Court has determined that Rollins has not demonstrated that the Superior Court erred when it decided his postconviction motion on the basis of the report and without conducting an evidentiary hearing.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice